

144597

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

CERRO COPPER PRODUCTS CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

Civil Action No.

92-CV-204-WDS

MOTION FOR PROTECTIVE ORDER

COMES NOW Defendant Monsanto Company ("Monsanto") and pursuant to Rule 26(c) of the Federal Rules of Civil Procedure requests this Court enter a protective order delaying the depositions of Monsanto and in support of this motion states as follows:

1. Discovery cut-off in this litigation is September 1, 1994.
2. Cerro has given Monsanto notice ("Notice") of Cerro's intent to take four depositions of Monsanto pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure. See Exhibits A-D attached hereto.
3. The depositions are currently scheduled to take place on February 16, 17, 24, and 25, 1994, respectively.
4. Monsanto has spent in excess of \$75,000 in attorneys' fees, and a review team has spent thousands of hours, reviewing well over one million pages of potentially responsive documents and interviewing in excess of twenty-five past and present Monsanto employees in order to respond to Cerro's extensive discovery.

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5. Monsanto has produced in excess of 53,000 pages of documents to date. Nevertheless, despite Monsanto's efforts to fully respond to Cerro's discovery, Monsanto has not yet completed its production of responsive documents.

6. Monsanto anticipates producing the majority of its responsive documents, approximately the same number of pages as already produced, for Cerro's review on or about February 21, 1994.

7. Additionally, it appears that Cerro has failed to fully produce several categories of responsive documents to Monsanto.

8. With the discovery cut-off date more than six months away, depositions of either party at this time is unnecessarily harassing and burdensome because such depositions will likely have to be repeated following the production of additional documents by both parties.

9. Additionally, Cerro's Notices violate the mandates of Rule 30(b)(6) of the Federal Rules of Civil Procedure because the Notices fail to "describe with reasonable particularity the matters in which examination is requested."

10. After personal consultations by telephone between Monsanto's counsel, Joseph M. Kellmeyer, and Cerro's counsel, John M. Nolan, on February 7, 1994 at approximately 9:00 a.m. and 5:30 p.m. local time, and a good faith effort to resolve differences, Cerro has rejected all efforts by Monsanto made pursuant to Local Rule 12(c) to reschedule and reasonably limit and particularize the Notices.

WHEREFORE, for the reasons stated above and those set forth in the Memorandum filed herewith, Monsanto requests this Court enter a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure: (1) requiring that the depositions of the parties in this litigation not be had until some agreeable future date after the majority of responsive documents have been produced; and/or (2) reasonably limiting the subjects that are to be covered at deposition pursuant to the Notices.

Respectfully submitted,

COBURN & CROFT

By: 

Joseph G. Nassif

Bruce D. Ryder

Joseph M. Kellmeyer

One Mercantile Center

Suite 2900

St. Louis, MO 63101

(314) 621-8575

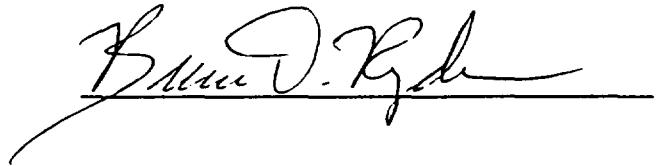
Attorneys for Defendant
Monsanto Company

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he caused a copy of the foregoing to be mailed, first class postage prepaid this 14th day of February, 1994, to:

Alan C. Kohn, Esq.
Rebecca Stith, Esq.
Kohn, Shands, Elbert, Gianoulakis & Giljum
One Mercantile Center, 24th Floor
St. Louis, MO 63101

John M. Nolan, Esq.
Lowenstein, Sandler, Kohl, Fisher & Boylan
600 First Avenue
Raritan, NJ 08869-1308

A handwritten signature in dark ink, appearing to read "Alan C. Kohn", is written over a horizontal line.

JOHN M. NOLAN, ESQ
LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
600 First Avenue
Raritan, New Jersey 08869
(908) 526-3300
Attorneys for Plaintiff
Cerro Copper Products, Co.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CERRO COPPER PRODUCTS, CO.,

Plaintiff,

v.

MONSANTO COMPANY,

Defendant.

:Hon. William Stiehl

:

:Civil Action No. 92-CV-204-WDS

:

:NOTICE TO TAKE ORAL DEPOSITION

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TO: Joseph Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center
29th Floor
St. Louis, Missouri 63101

PLEASE TAKE NOTICE that in accordance with Rules
30(b)(6) and 32 of the Federal Rules of Civil Procedure,

THIS IS ORIGINAL OF FAX SENT
TO YOU ON 1/28/94

EXHIBIT

A

004017

JOHN M. NOLAN, ESQ
LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
600 First Avenue
Raritan, New Jersey 08869
(908) 526-3300
Attorneys for Plaintiff
Cerro Copper Products, Co.

UNITED STATES DISTRICT COURT
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Coburn & Croft
One Mercantile Center
29th Floor
St. Louis, Missouri 63101

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EXHIBIT

B

0041018

testimony will be taken by deposition upon oral examination before a person authorized by law to administer oaths commencing at 10:00 a.m. on Thursday, February 24, 1994, and continuing day to day thereafter until completed, at the law offices of Coburn & Croft, One Mercantile Center, 29th Floor, St. Louis, Missouri, with respect to all matters relevant to the subject matter involved in this action. At that time and place Defendant Monsanto Company ("Monsanto") shall designate and produce one or more officers, directors or managing agents, or other persons who consent to testifying on its behalf, who shall testify on behalf of Monsanto with respect to the following:

The investigation and/or study, and the results of the investigations and/or studies, of environmental conditions and/or contamination at the W.G. Krummrich Plant by hazardous substances that are similar or identical to those found during the clean-up of Dead Creek Segment A.

The designated witness(es) should be prepared to testify to matters known or reasonably available to Monsanto.

PLEASE TAKE FURTHER NOTICE that failure to comply with this demand may subject you such sanctions as the Rules of this Court may allow and the Court may direct.

LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
Attorneys for Plaintiff
Cerro Copper Products, Co.

By: 
John M. Nolan

Dated: January 27, 1994

012794JMNP-CerroD

004019

JOHN M. NOLAN, ESQ
LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
600 First Avenue
Raritan, New Jersey 08869
(908) 526-3300
Attorneys for Plaintiff
Cerro Copper Products, Co.

UNITED STATES DISTRICT COURT
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TO: Joseph Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center
29th Floor
St. Louis, Missouri 63101

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EXHIBIT

C

004020

testimony will be taken by deposition upon oral examination before a person authorized by law to administer oaths commencing at 10:00 a.m. on Thursday, February 17, 1994, and continuing day to day thereafter until completed, at the law offices of Coburn & Croft, One Mercantile Center, 29th Floor, St. Louis, Missouri, with respect to all matters relevant to the subject matter involved in this action. At that time and place Defendant Monsanto Company ("Monsanto") shall designate and produce one or more officers, directors or managing agents, or other persons who consent to testifying on its behalf, who shall testify on behalf of Monsanto with respect to the following:

The design and operation of the combined sewer system at the W.G. Krummrich Plant and the 36" overflow pipe that led from Monsanto to Dead Creek Segment A.

The designated witness(es) should be prepared to testify to matters known or reasonably available to Monsanto.

PLEASE TAKE FURTHER NOTICE that failure to comply with this demand may subject you such sanctions as the Rules of this Court may allow and the Court may direct.

LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
Attorneys for Plaintiff
Cerro Copper Products, Co.

By: 
John M. Nolan

Dated: January 27, 1994

012794JMNP-CerroDep

JOHN M. NOLAN, ESQ
LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
600 First Avenue
Raritan, New Jersey 08869
(908) 526-3300
Attorneys for Plaintiff
Cerro Copper Products, Co.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

CERRO COPPER PRODUCTS, CO.,

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v.

MONSANTO COMPANY,

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:Hon. William Stiehl

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TO: Joseph Kellmeyer, Esq.
Coburn & Croft
One Mercantile Center
29th Floor
St. Louis, Missouri 63101

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EXHIBIT

D

testimony will be taken by deposition upon oral examination before a person authorized by law to administer oaths commencing at 10:00 a.m. on Wednesday, February 16, 1994, and continuing day to day thereafter until completed, at the law offices of Coburn & Croft, One Mercantile Center, 29th Floor, St. Louis, Missouri, with respect to all matters relevant to the subject matter involved in this action. At that time and place Defendant Monsanto Company ("Monsanto") shall designate and produce one or more officers, directors or managing agents, or other persons who consent to testifying on its behalf, who shall testify on behalf of Monsanto with respect to the following:

The manufacturing processes utilized by Monsanto at the W.G. Krummrich Plant for the period 1917 through 1990, including but not limited to the identity of the products that were manufactured, how these products were manufactured, the volume, amount, and identity of raw materials utilized in the manufacture of these products, and the volume and amount of finished product.

The designated witness(es) should be prepared to testify to matters known or reasonably available to Monsanto.

PLEASE TAKE FURTHER NOTICE that failure to comply with this demand may subject you such sanctions as the Rules of this Court may allow and the Court may direct.

LOWENSTEIN, SANDLER, KOHL,
FISHER & BOYLAN
A Professional Corporation
Attorneys for Plaintiff
Cerro Copper Products, Co.

By: 
John M. Nolan

Dated: January 27, 1994

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